



284013

PHYSICAL DOCUMENT

---

LPS-n284013-v1

---

[PROPOSED] CONSENT DECREE

**Author:** lacangelo, Rachel

**Document Type:** FILINGS

**LSA(s):**

**Co-Counsel:**

**Counsel LSA(s):**

**Distribution List:** Rose, Robert (ENRD);Reed, Jason (ENRD);True, Michael (ENRD);Clagett, Genevieve (ENRD);Smith, Justin (ENRD);lacangelo, Rachel (ENRD);Woody, Carolyn (ENRD);Clark, Lisa M. (ENRD);Boyd, Erica (ENRD)

**Fileroom:** LPS - Main Justice

**DJ#:** "

**Case Name:** "

**Court:** "

**Notes:**

**Double-Sided:** N

**Received Date:** 7/22/2020

**Urgent:** N

**Oversize:** N

**Bound Document:** N

LAW OFFICES  
**BRODSKY & SMITH, LLC**

9595 WILSHIRE BLVD., SUITE 900  
BEVERLY HILLS, CA 90212

877.534.2590  
FAX 310.247.0160  
www.brodskysmith.com

U.S. DEPARTMENT OF JUSTICE  
ENVIRONMENT AND NATURAL  
RESOURCES DIVISION

JUL 17 2020

EXECUTIVE OFFICE

PENNSYLVANIA OFFICE  
TWO BALA PLAZA, SUITE 510  
BALA CYNWYD, PA 19004  
610.667.6200

NEW YORK OFFICE  
240 MINEOLA BOULEVARD  
MINEOLA, NY 11501  
516.741.4977

NEW JERSEY OFFICE  
1040 KINGS HIGHWAY NORTH, STE. 601  
CHERRY HILL, NJ 08034  
856.795.7250

Email: [esmith@brodskysmith.com](mailto:esmith@brodskysmith.com)

July 13, 2020

**VIA CERTIFIED MAIL & ELECTRONIC MAIL**

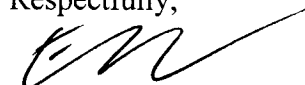
Citizen Suit Coordinator Department of Justice Environment and Natural Resources Division Law and Policy Section P.O. Box 7415 Ben Franklin Station Washington, DC 20044-7415	Administrator U.S. Environmental Protection Agency Mail Code: 1101A 1200 Pennsylvania Avenue, N.W. Washington, DC 20460
Regional Administrator U.S. EPA, Region 9 75 Hawthorne Street San Francisco, CA 94105	

Re: **Veronica Guzman v. Associated Pacific Constructors, Inc.**  
**CACD Case No. 2:19-cv-05559-RGK-SS**

To Whom It May Concern:

We represent Plaintiff Veronica Guzman in the above-referenced action. Please find enclosed a copy of (i) the [Proposed] Consent Decree in the above-referenced action to for review pursuant to the Clean Water Act, 33 U.S.C. § 1365(c)(3) and 40 C.F.R. 135.5; and (ii) a letter from the non-profit entity Council for Watershed Health regarding funds it is to receive under the terms of the [Proposed] Consent Decree in the form of a supplemental environmental project.

Respectfully,



Evan J. Smith

1 Evan J. Smith (SBN 242352)  
Ryan P. Cardona (SBN 302113)  
2 BRODSKY & SMITH, LLC  
9595 Wilshire Blvd., Ste. 900  
3 Beverly Hills, CA 90212  
4 Tel: 877.534.2590  
Fax: 310.247.0160  
5 Email: esmith@brodskysmith.com  
rcardona@brodskysmith.com  
6

7 *Attorneys for Plaintiff*

8 Sarah T. Sangmeister (SBN 176068)  
Tara B. Voss (SBN 261967)  
9 Samantha W. Mahoney, (SBN 29350)  
PEACOCK PIPER TONG + VOSS LLP  
10 100 W. Broadway, Suite 610  
Long Beach, CA 90802  
11 Tel: 562.320.8880  
12 Fax: 562.735.3950  
Email: ssangmeister@peacockpiper.com  
13 tvoss@peacockpiper.com  
smahoney@peacockpiper.com  
14

15 *Attorneys for Defendant*

16 **UNITED STATES DISTRICT COURT**  
17 **CENTRAL DISTRICT OF CALIFORNIA**

18 VERONCIA GUZMAN,

19 Plaintiff,

20 vs.

21 ASSOCIATED PACIFIC CONSTRUCTORS,  
22 INC.,

23 Defendant,  
24  
25  
26  
27  
28

Civil Case No.: 2:19-cv-05559-RGK-SS

**[PROPOSED] CONSENT DECREE**

**(Federal Water Pollution Control Act,  
33 U.S.C. §§ 1251 *et seq.*)**

1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8

2  
3  
4

5

6  
7  
8  
9

0  
1  
23  
4

5

6  
7  
8

9  
0  
1  
2  
3

4  
5  
6  
7  
8

1 comply with the terms of the Industrial Stormwater Permit list “Associated Pacific Constructors Inc” and  
2 “APC berth 193” as the Operator and Facility names, respectively;

3 **WHEREAS**, on April 3, 2019, Plaintiff sent APC, the United States Environmental Protection  
4 Agency (“EPA”), EPA Region IX, the State Water Resources Control Board (“State Board”), and the  
5 Regional Water Quality Control Board – Los Angeles Region (“Regional Board”) a notice of intent to file  
6 suit (“Notice Letter”) under Sections 505(a) and (b) of the Clean Water Act, 33 U.S.C. §§ 1365(a) and  
7 (b). The Notice Letter alleged violations of Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a)  
8 and violations of the 1997 Storm Water Permit and the IGP at the APC Facility<sup>1</sup>;

9 **WHEREAS**, on June 26, 2019, Plaintiff filed a complaint against APC in the United States District  
10 Court, Central District of California (Case No. 2:19-cv-05559-RGK-SS), alleging violations of Section  
11 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), and violations of the Storm Water Permit at the APC  
12 Facility (“Complaint”);

13 **WHEREAS**, Plaintiff alleges APC to be in violation of the substantive and procedural  
14 requirements of the 1997 Storm Water Permit, the IGP and the Clean Water Act with respect to the APC  
15 Facility;

16 **WHEREAS**, on September 18, 2019, APC filed an answer in response to the Complaint, denying  
17 all allegations in the Notice Letter and Complaint relating to the APC Facility (“Answer”);

18 **WHEREAS**, on September 30, 2019, Plaintiff’s expert environmental consultant conducted an  
19 inspection of the Facility;

20 **WHEREAS**, within 45 days following the entry of this Consent Decree, APC has agreed to upload  
21 a revised SWPPP to the Water Boards Storm Water Multiple Application & Report Tracking System  
22 (“SMARTS”), containing additional BMPs outlined herein and designed to bring the Facility into further  
23 compliance with the IGP and based upon the findings in the September 30, 2019 inspection of the Facility  
24 and subsequent discussion and agreement between the Parties and their respective consultants;

25 **WHEREAS**, APC continues to deny all allegations in the Notice Letter and Complaint relating to  
26 the APC Facility;

27  
28 <sup>1</sup> For purposes of this Consent Decree, the NPDES permit and any amendments thereto in effect at the  
time of APC’s required compliance with the terms of this Consent Decree shall be referred to as “the  
Industrial General Permit” or “IGP.”

1       **WHEREAS**, Plaintiff and APC have agreed that it is in the Settling Parties' mutual interest to  
2 enter into a Consent Decree setting forth terms and conditions appropriate to resolving the allegations set  
3 forth in the Complaint without further proceedings; and

4       **WHEREAS**, all actions taken by APC pursuant to this Consent Decree shall be made in  
5 compliance with all applicable federal and state laws and local rules and regulations.

6       **NOW THEREFORE IT IS HEREBY STIPULATED BETWEEN THE SETTLING**  
7 **PARTIES AND ORDERED AND DECREED BY THE COURT AS FOLLOWS:**

8       **1.**       The Court has jurisdiction over the subject matter of this action pursuant to Section 505(a)  
9 of the Clean Water Act, 33 U.S.C. § 1365(a);

10       **2.**       Venue is appropriate in the Central District of California pursuant to Section 505(c)(1) of  
11 the Clean Water Act, 33 U.S.C. § 1365(c)(1), because the APC Facility is located within this District;

12       **3.**       Although APC denies the allegations set forth in the Notice and Complaint, for the purpose  
13 of this Consent Decree, the Parties stipulate that the Complaint states facts that, if true, would be sufficient  
14 to state a claim upon which relief may be granted pursuant to Section 505(a)(1) of the Clean Water Act,  
15 33 U.S.C. § 1365(a)(1);

16       **4.**       Plaintiff has alleged facts that if true would be sufficient to demonstrate her standing to  
17 bring this action;

18       **5.**       The Court shall retain jurisdiction over this matter for purposes of enforcing the terms of  
19 this Consent Decree for the life of the Consent Decree, or as long thereafter as is necessary for the Court  
20 to resolve any motion to enforce this Consent Decree.

21 **I.       OBJECTIVES**

22       It is the express purpose of the Settling Parties entering into this Consent Decree to further the  
23 objectives set forth in the Clean Water Act, 33 U.S.C. §§ 1251, et seq., and to resolve those issues alleged  
24 by Plaintiff in her Complaint. Specifically, APC agrees to comply with the Receiving Water Limitation  
25 VI.A., in the IGP which provides in part that dischargers "shall ensure that industrial storm water  
26 discharges ... do not cause or contribute to an exceedance of any applicable water quality standards in any  
27 affected receiving water,"; the Effluent Limitation V.A., of the IGP which provides in part that dischargers  
28 "shall implement [Best Management Practices ("BMPs) that comply with the BAT/BCT requirements of

1 the [IGP] to reduce or prevent discharges of pollutants in their storm water discharge in a manner that  
2 reflects best industry practice considering technological availability and economic practicability and  
3 achievability”; and the Monitoring, Sampling, and Analysis Requirements found in § XI of the IGP which  
4 provides in part that dischargers “shall collect and analyze storm water samples from two (2) [Qualifying  
5 Storm Events (“QSEs”)] within the first half of each reporting year (July 1 to December 31), and two (2)  
6 QSEs within the second half of each reporting year (January 1 to June 30).” The IGP defines a QSE as “a  
7 precipitation event that: a. Produces a discharge for at least one drainage area; and, b. Is preceded by 48  
8 hours with no discharge from any drainage area.” APC shall develop and implement those BMPs  
9 identified in Section III(A) of this Agreement. Nothing herein shall be interpreted as an admission by  
10 APC that it has previously failed to comply with these or any other requirements of the CWA or the IGP.

11 **II. AGENCY REVIEW AND TERM OF CONSENT DECREE**

12 **A. Agency Review and Comment.** Plaintiff shall submit this Consent Decree to the United States  
13 Department of Justice and the EPA (collectively “Federal Agencies”) within three (3) days of the final  
14 signature of the Settling Parties for agency review consistent with 40 C.F.R. § 135.5. The agency review  
15 period expires forty-five (45) days after receipt by both agencies, as evidenced by written  
16 acknowledgement of receipt by the agencies or the certified return receipts, copies of which shall be  
17 provided to APC if requested. In the event that the Federal Agencies object to entry of this Consent  
18 Decree, the Settling Parties agree to meet and confer to attempt to resolve the issue(s) raised by the Federal  
19 Agencies within a reasonable amount of time.

20 **B. Effective Date.** The term “Effective Date” as used in this Consent Decree shall mean the day the  
21 Court enters this Consent Decree.

22 **C. Termination Date.** This Consent Decree shall terminate two (2) years after the Effective Date  
23 (“Termination Date”), or at such time as APC ceases to be subject to the IGP and APC: 1) files all  
24 necessary and appropriate submissions regarding the same to the State Board and/or the Regional Board;  
25 and 2) provides notice of such filing to Plaintiff, unless there is a prior ongoing, unresolved dispute  
26 regarding APC’s compliance with this Consent Decree.

27  
28 ///

1 **III. POLLUTION CONTROL REQUIREMENTS**

2 **A. Storm Water Pollution Reduction Measures**

3 1. The storm water pollution control measures required by this Consent Decree shall be  
4 designed and operated to manage storm water discharges, through full compliance with the IGP.

5 2. Commencing from the Effective Date through the termination date, APC shall engage in  
6 the following activities to achieve compliance with the Permit and this Consent Decree:

7 (a) APC will appoint a Qualified Industrial Storm Water Practitioner ("QISP") within sixty  
8 (60) days after the Effective Date;

9 (b) Certify and submit to Plaintiff and the RWQCB via SMARTS the QISP's identification  
10 number, name, and contact information (telephone number, e-mail address).

11 3. In addition to the activities described in Sections III.A.2(a) above, APC will assure the  
12 incorporation of the following BMPs, as more fully described in APC's SWPPP, which shall be  
13 implemented at the Facility, the boundaries of which are outlined on the APC's Facility Site Map  
14 accompanying the SWPPP ("Site Map"). The Parties agree that the SWPPP may be modified from time  
15 to time as more fully described in this Consent Decree. In the event of a modification to the SWPPP or  
16 Facility Site Map during the term of this Consent Judgment, APC will provide a copy of the revised  
17 exhibits to Plaintiff in the manner described herein, and to the RWQCB via SMARTs.

18 (a) **BMPs**

19 (i) Protect temporary storage from stormwater exposure (e.g., roll-off bins and  
20 containers from recyclers);

21 (ii) Perform repair and/or maintenance work to minimize or resolve any oil leaks from  
22 equipment and vehicles operated at the Facility;

23 (iii) Shore up the borders along the water-side of the Facility to minimize or prevent  
24 any potential stormwater runoff into the receiving water;

25 (iv) Remove peeling and flaking paint from structure.

26 4. Within forty-five (45) days after the Effective Date, APC shall revise the SWPPP for the  
27 APC Facility to include any BMPs required by the Consent Decree and comply with all provisions of the  
28 Permit.



1           5.       Throughout the term of this Consent Decree, APC shall submit any SWPPP revisions made  
2 pursuant to the requirements of this Section III.A to Plaintiff in the manner described herein.

3 **B.     Numeric Action Level (“NAL”) for Discharges from the APC Facility.** APC acknowledges  
4 that Numeric Action Levels (“NALs”) in the IGP are applicable to the Facility. APC will include the SIC  
5 Codes and corresponding parameters in its revised SWPPP (consistent with Section III(a)(4) herein), and  
6 will continue to act in conformity with the IGP and the SWPPP for the Facility, as may be amended from  
7 time to time.

8           1.       **Exceedance Response Actions (ERAs)**

9               a.       APC acknowledges that it is required to comply with the Exceedance Response  
10              Action requirements of the permit as stated in IGP § XII.

11 **C.     Sampling and Analysis**

12           1.       Within ninety (90) days of the Effective Date, APC shall review its plan for monitoring all  
13 storm water discharges from the APC Facility that meet the requirements of this Consent Decree and  
14 Section XI of the Permit, and incorporate the same into its SWPPP.

15           2.       During the life of this Consent Decree, APC shall collect samples of any QSE, as defined  
16 in the IGP and as required by the IGP. However, nothing herein shall require APC to conduct sampling  
17 in quarters when a QSE, as defined by the IGP, does not occur or if sampling is not otherwise required by  
18 the IGP.

19           3.       APC shall comply with the analytical methods as required by Section XI.B of the IGP.

20           4.       APC shall request that results of all sample analyses required by this Consent Decree be  
21 reported to it within thirty (30) days of laboratory receipt of the sample.

22           5.       During the term of the Consent Decree, APC will give notice to Plaintiff of the filing of  
23 any reports or other documents containing the complete laboratory results of samples collected as required  
24 by this Consent Decree concurrently with the posting of the same on SMARTS.

25 **D.     Visual Observations.** During the life of this Consent Decree, APC shall conduct and document  
26 visual observations pursuant to Section XI.A of the IGP and as more fully described in the APC SWPPP.

27 **E.     Annual Comprehensive Facility Compliance Evaluation.** APC shall give notice, pursuant to  
28 Paragraph VII.E. hereof, to Plaintiff when APC submits an Annual Comprehensive Facility Compliance

1 Evaluation ("Annual Evaluation") to the State Board no later than July 15 of each year during the term of  
2 this Consent Decree. The Annual Evaluation shall contain all information required by the IGP and/or the  
3 SWPPP.

#### 4 **IV. MONITORING AND REPORTING**

##### 5 **A. Site Inspections.**

6       **1.** Once during each year of the life of this Consent Decree, Plaintiff may conduct an  
7 inspection of the Facility up to forty-five (45) days prior to the Termination Date. Up to three (3) of  
8 Plaintiff's representatives may attend the site inspection. The site inspection shall occur during normal  
9 business hours. Plaintiff and APC shall work in good faith to select a mutually acceptable date for the  
10 inspection, which will be scheduled at least ten (10) business days in advance. APC's personnel or  
11 contractors may accompany Plaintiff's representative(s) throughout the inspection.

12       **2.** Plaintiff shall provide APC with any comments regarding the Site Inspection within  
13 seventy-two (72) hours of the completion thereof. Said comments shall be prepared, signed and certified  
14 by Plaintiff's designated QISP. APC shall respond to Plaintiff's comments within thirty (30) days of the  
15 date on which they are received; however, APC is not obligated to respond to any comments regarding  
16 the Site Inspection received after seventy-two (72) hours has passed.

17 **B. Compliance Monitoring and Oversight.** APC shall make a one-time payment of Dollars (\$500)  
18 to compensate Plaintiff's Counsel for costs and fees to be incurred for monitoring APC's compliance with  
19 this Consent Decree. Payment shall be made within fourteen (14) business days of the Effective Date  
20 payable to "Brotsky & Smith, LLC" via U.S. Mail.

21 **C. APC Document Provision.** During the life of this Consent Decree, within ten (10) days, APC  
22 shall give notice to Plaintiff of all documents related to storm water quality at the APC Facility that are  
23 submitted to the Regional Board via the SMARTS system. This Consent Decree shall not require APC  
24 to disclose any information or documents subject to the Attorney Client Privilege or the Attorney Work  
25 Product doctrine.

#### 26 **V. ENVIRONMENTAL PROJECT & REIMBURSEMENT OF LITIGATION FEES & COSTS**

27 **A. Environmental Project.** To remediate the alleged environmental harms resulting from non-  
28 compliance with the 1997 Storm Water Permit and IGP alleged in the Complaint, APC agrees to make a

1 payment of Two Thousand Five Hundred Dollars (\$2,500.00) to the “Council for Watershed Health” and  
2 mailed to The Council for Watershed Health attention Eileen Alduenda, Executive Director, 177 E.  
3 Colorado Blvd., Ste. 200, Pasadena, CA 91105 to fund the Monitoring the Impacts of Stormwater  
4 Infiltration on Groundwater Quality program, dedicated to the study and evaluation of the impacts to  
5 groundwater quality from infiltrating stormwater throughout Los Angeles County. The payment shall be  
6 made within fourteen (14) business days of the Effective Date.

7 **B. Reimbursement of Attorneys’ Fees and Costs.** APC shall pay a total of Twenty Two Thousand  
8 Five Hundred Dollars (\$22,500.00) to “Brodsky & Smith, LLC” for their investigation fees and costs,  
9 expert/consultant fees and costs, and reasonable attorneys’ fees incurred as a result of investigating and  
10 preparing the lawsuit and negotiating this Consent Decree. Payment shall be made payable to “Brodsky  
11 & Smith, LLC” within fourteen (14) business days of the Effective Date via U.S. Mail.

12 **VI. DISPUTE RESOLUTION AND RETENTION OF JURISDICTION**

13 **A. Continuing Jurisdiction.** This Court shall retain jurisdiction over this matter until the  
14 Termination Date defined above for the purposes of implementing and enforcing the terms and conditions  
15 of this Consent Decree and adjudicating all disputes among the Parties that may arise under the provisions  
16 of this Consent Decree, unless a Party files and is granted a timely motion requesting an extension of time  
17 for the Court to retain jurisdiction. The Court shall have the power to enforce this Consent Decree with  
18 all available legal and equitable remedies, including contempt.

19 **B. Meet and Confer.** A Party to this Consent Decree shall invoke the dispute resolution procedures  
20 of this Section by notifying the other Party in writing of the matter(s) in dispute. The Settling Parties shall  
21 then meet and confer in good faith (either telephonically or in person) in an attempt to resolve the dispute  
22 informally over a period of ten (10) days from the date of the notice. The Parties may elect to extend this  
23 time in an effort to resolve the dispute without court intervention.

24 **C. Dispute Resolution.** If the Parties cannot resolve a dispute by the end of meet and confer informal  
25 negotiations, then the parties shall attempt to settle the dispute through mediation by a single mediator  
26 provided by JAMS pursuant to JAMS Streamlined Arbitration Rules and Procedures in effect at the time  
27 the act or acts being disputed occurred.

28 **D. Burden of Proof.** In any dispute resolution proceeding, the Party invoking the dispute resolution

1 procedures provided herein shall have the burden of demonstrating that the other Party has failed to meet  
2 its obligations as set forth herein.

3 **E. Enforcement Fees and Costs.** If formal dispute resolution is not successful, then the parties may  
4 file a motion to enforce the settlement with the Court. The litigation costs and fees incurred in prosecuting  
5 a motion to enforce such shall be awarded to the prevailing party.

6 **VI. MUTUAL RELEASE OF LIABILITY AND COVENANT NOT TO SUE**

7 **A. Plaintiff's Public Release of Claims.** This Consent Judgment is a final and binding resolution  
8 between Plaintiff, on her own behalf, and on behalf of the public and in the public interest, and APC, and  
9 their parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents,  
10 employees, attorneys, if any (collectively "Releasees"), and shall have a preclusive effect such that no  
11 other person or entity, whether purporting to act in his, her, or its interests or the public interest shall be  
12 permitted to pursue and/or take any action with respect to any violation of the CWA that was alleged in  
13 the Complaint, or that could have been brought pursuant to the Notice. Nothing in this Consent Decree  
14 waives the rights of the United States to enforce its rights under Federal Law.

15 **B. Plaintiff's Release of Additional Claims.** As to Plaintiff for and in her individual capacity only,  
16 this Consent Judgment shall have preclusive effect such that she shall not be permitted to pursue and/or  
17 take any action with respect to any other statutory or common law claim, to the fullest extent that any of  
18 the foregoing were or could have been asserted by her against APC or the Releasees based on the facts  
19 alleged in the Complaint and/or the Notice, whether or not based on actions committed by APC.

20 **C. Waiver of Rights Under Section 1542 of the California Civil Code**

21 1. Plaintiff acting in her individual capacity waives all rights to institute any form of legal  
22 action, and releases all claims against APC, and the Releasees, (referred to collectively in this Section as  
23 the "Claims"). In furtherance of the foregoing, Plaintiff waives any and all rights and benefits which he  
24 now has, or in the future may have, conferred upon him with respect to the Claims by virtue of the  
25 provisions of § 1542 of the California Civil Code, which provides as follows:

26 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES  
27 NOT KNOW OR SUSPECT EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE  
28 RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS

1 SETTLEMENT WITH THE DEBTOR.

2 2. Plaintiff understands and acknowledges that the significance and consequence of this  
3 waiver of California Civil Code § 1542 is that even if Plaintiff suffers future damages arising out of or  
4 resulting from, or related directly or indirectly to, in whole or in part, the facts in the Complaint, Plaintiff  
5 will not be able to make any claim for those damages against Releasees.

6 **D. APC's Release of Plaintiff.** APC hereby waives any and all claims it may have as of the date of  
7 this agreement against Plaintiff, her attorneys, and other representatives for any and all actions taken or  
8 statements made (or those that could have been taken or made) by Plaintiff and her attorney and other  
9 representatives in the course of prosecuting the Claims. Nothing in this Consent Decree waives the rights  
10 of the United States to enforce its rights under Federal Law.

11 **E. Parties' Release.** Unless specifically provided for in this Consent Decree, the Parties, on their  
12 own behalf and on behalf of their current and former officers, directors, employees, and each of their  
13 successors and assigns, and their agents, and other representatives release all persons including, without  
14 limitation, all other Parties to this Consent Decree (and each of their direct and indirect parent and  
15 subsidiary companies and affiliates, and their respective current and former officers, directors, members,  
16 employees, shareholders, and each of their predecessors, successors, and assigns, and each of their agents,  
17 attorneys, consultants, and other representatives) from any attorneys' fees or expenses related to the  
18 resolution of this matter.

19 **F.** Nothing in this Consent Decree limits or otherwise affects any Party's right to address or take any  
20 position that it deems necessary or appropriate in any formal or informal proceeding before the State  
21 Board, Regional Board, EPA, or any other administrative body on any other matter relating to APC's  
22 compliance with the IGP or the Clean Water Act occurring or arising after the Effective Date of this  
23 Consent Decree.

24 **VII. MISCELLANEOUS PROVISIONS**

25 **A. No Admission of Liability.** Neither this Consent Decree, the implementation of additional or  
26 modified BMPs, nor any payment pursuant to the Consent Decree shall constitute or be construed as a  
27 finding, adjudication, admission, or acknowledgment of any fact, law, or liability, nor shall it be construed  
28 as an admission of violation of any law, rule, or regulation. APC maintains and reserves all defenses it

1 may have to any alleged violations that may be raised in the future.

2 **B. Construction.** The language in all parts of this Consent Decree shall be construed according to  
3 its plain and ordinary meaning, except as to those terms defined in the IGP, the Clean Water Act, or  
4 specifically herein.

5 **C. Choice of Law and Venue.** The laws of the United States shall govern this Consent Decree, with  
6 venue proper only in the Central District of California.

7 **D. Severability.** In the event that any provision, paragraph, section, or sentence of this Consent  
8 Decree is held by a court to be unenforceable, the validity of the enforceable provisions shall not be  
9 adversely affected.

10 **E. Correspondence and Notices.** Any and all notices and/or correspondence between the Parties  
11 provided for or permitted under this Consent Decree shall be in writing and personally delivered or sent  
12 by:

- 13 1. First-class (registered or certified) mail return receipt requested; or
- 14 2. Overnight or two-day courier; or
- 15 3. By email with confirmed receipt only (thus at the risk of the email sender); on any Party

16 by the other Party to the following addresses:

17 **If to Plaintiff:**

18 Evan J. Smith, Esquire  
19 Brodsky & Smith, LLC  
20 Two Bala Plaza, Suite 510  
21 Bala Cynwyd, PA 19004  
T: 877.354.2590  
Email: esmith@brodskysmith.com

22 **If to APC:**

23 Sarah T. Sangmeister, Esquire  
24 PEACOCK PIPER TONG + VOSS LLP  
25 100 W. Broadway, Suite 610  
Long Beach, CA 90802  
26 Tel: 562.320.8880  
Fax: 562.735.3950  
27 Email: ssangmeister@peacockpiper.com

28 Any change of address or addresses shall be communicated in the manner described above for giving

1 notices.

2 **F. Counterparts.** This Consent Decree may be executed in any number of counterparts, all of which  
3 together shall constitute one original document. Telecopy, email of a .pdf signature, or facsimile copies  
4 of original signature shall be deemed to be originally executed counterparts of this Consent Decree.

5 **G. Modification of the Consent Decree.** Except as otherwise provided herein, this Consent Decree,  
6 and any provisions herein, may not be changed, waived, discharged, or terminated unless by a written  
7 instrument, signed by the Settling Parties, or upon motion of any Party as provided by law and upon an  
8 entry of a modified Consent Judgment by the Court. If any Settling Party wishes to modify any provision  
9 of this Consent Decree, the Settling Party must notify the other Settling Party in writing at least twenty-  
10 one (21) days prior to taking any step to implement the proposed change.

11 **H. Full Settlement.** This Consent Decree contains the sole and entire agreement and understanding  
12 of the Parties with respect to the entire subject matter hereof, and any and all discussions, negotiations,  
13 commitments and understandings related thereto. No representations, oral or otherwise, express or  
14 implied, other than those contained herein have been made by any party hereto. No other agreements not  
15 specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties.

16 **I. Integration Clause.** This is an integrated Consent Decree. This Consent Decree is intended to  
17 be a full and complete statement of the terms of the Consent Decree between the Settling Parties and  
18 expressly supersedes any and all prior oral or written Consent Decrees, covenants, representations, and  
19 warranties (express or implied) concerning the subject matter of this Consent Decree.

20 **J. Authority of Counsel.** The undersigned representatives for Plaintiff and APC each certify that  
21 he/she is fully authorized by the party whom he/she represents to approve this Consent Decree as to form.

22 **K. Authority.** APC certifies that its undersigned representative is fully authorized to enter into this  
23 Consent Decree, to execute it on behalf of APC, and to legally bind APC to its terms.

24 **L. Agreement to be Bound.** The Settling Parties, including any successors or assigns, agree to be  
25 bound by this Consent Decree and not to contest its validity in any subsequent proceeding to implement  
26 or enforce its terms.

1 **VIII. COURT APPROVAL**

2 The Parties hereby respectfully request that the Court promptly approve and enter this Consent Decree.  
3 Upon entry of this Consent Decree, Plaintiff and Defendant waive their respective rights to a hearing or  
4 trial on the allegations of the Complaint and Notice which are at issue in this action. If this Consent  
5 Decree is not approved by the Court, it shall be of no force and effect, and it may not be used in any  
6 proceeding for any purpose.

7 **IN WITNESS WHEREOF**, the undersigned have executed this Consent Decree as of the date  
8 first set forth below.

9 **SO AGREED AND APPROVED AS TO CONTENT**

10 Dated: 5/7/2020

**PLAINTIFF**

11   
12 \_\_\_\_\_  
Veronica Guzman

13 Dated: \_\_\_\_\_


**ASSOCIATED PACIFIC CONSTRUCTORS, INC.**

14 By: \_\_\_\_\_  
15 Paul E. Gillen

17 **APPROVED AS TO FORM**

18 Dated: 6/3/2020

**BRODSKY & SMITH, LLC**

19 By:   
20 \_\_\_\_\_  
21 Evan J. Smith (SBN:242352)  
22 Attorneys for Plaintiff

23 Dated: \_\_\_\_\_

**PEACOCK PIPER TONG + VOSS LLP**

24 By: \_\_\_\_\_  
25 Sarah T. Sangmeister (SBN 176068)  
26 Attorneys for Associated Pacific Constructors, Inc.

27  
28 ///



1 **VIII. COURT APPROVAL**

2 The Parties hereby respectfully request that the Court promptly approve and enter this Consent Decree.  
3 Upon entry of this Consent Decree, Plaintiff and Defendant waive their respective rights to a hearing or  
4 trial on the allegations of the Complaint and Notice which are at issue in this action. If this Consent  
5 Decree is not approved by the Court, it shall be of no force and effect, and it may not be used in any  
6 proceeding for any purpose.

7 **IN WITNESS WHEREOF**, the undersigned have executed this Consent Decree as of the date  
8 first set forth below.

9 **SO AGREED AND APPROVED AS TO CONTENT**

10 Dated: \_\_\_\_\_ **PLAINTIFF**

11  
12 \_\_\_\_\_  
Veronica Guzman

13 Dated: 5/7/2020

**ASSOCIATED PACIFIC CONSTRUCTORS, INC.**

14 By: Paul E. Gillen  
15 Paul E. Gillen

16  
17  
18 **APPROVED AS TO FORM**

19 Dated: \_\_\_\_\_ **BRODSKY & SMITH, LLC**

20 By: \_\_\_\_\_  
21 Evan J. Smith (SBN:242352)  
22 Attorneys for Plaintiff

23 Dated: 6/1/20

**PEACOCK PIPER TONG + VOSS LLP**

24 By: Sarah T. Sangmeister  
25 Sarah T. Sangmeister (SBN 176068)  
26 Attorneys for Associated Pacific Constructors, Inc.

27  
28 ///

1 **IT IS SO ORDERED.**

2  
3 Date: \_\_\_\_\_

\_\_\_\_\_  
4 The Honorable R. Gary Klausner  
5 United States District Court Judge  
6 Central District of California  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



COUNCIL FOR  
**WATERSHED HEALTH**

10 July 2020

Via Email: [Matthew.Oakes@usdoj.gov](mailto:Matthew.Oakes@usdoj.gov)

US Department of Justice  
Citizen Suit Coordinator  
Environment and Natural Resources Division  
Law and Policy Section  
P.O. Box 7415  
Ben Franklin Station  
Washington, DC 20044-07415

RE: Veronica Guzman vs Associated Pacific Constructors, Inc. Civil Case No 2:19-cv-05559-RGK-SS

Dear Mr. Oakes:

The Council for Watershed Health has read the proposed consent decree for the above referenced citizen suit. The Council for Watershed Health (CWH) understands that as a result of the entry of the proposed consent decree by the Court, CWH shall receive funds in the amount of Two Thousand Five Hundred Dollars (\$2,500.00) for use on a Supplemental Environmental Project. CWH is recognized as an exempt entity under section 501 (c)(3) of the Internal Revenue Code. Any monies CWH receives under the consent decree will be used only for the purposes specified in the consent judgement to alleviate environmental harms done to the Los Angeles River and its tributaries. No money will be used for lobbying purposes. Once the Supplemental Environmental Project (SEP) is completed, CWH will submit to the United States District Court Central District of California and to the parties a letter describing how the SEP funds were spent.

Attached is a project description which details how the funds will be spent.

If any additional information is needed, please contact me via email at [eileen@watershedhealth.org](mailto:eileen@watershedhealth.org).

Sincerely,

Eileen Alduenda  
Executive Director

cc:

Evan J. Smith – [esmith@brodskysmith.com](mailto:esmith@brodskysmith.com)  
Ryan P. Cardona – [rcardona@brodskysmith.com](mailto:rcardona@brodskysmith.com)  
Sarah T. Sangmeister – [ssangmeister@peacockpiper.com](mailto:ssangmeister@peacockpiper.com)  
Tara B. Voss – [tvoss@peacockpiper.com](mailto:tvoss@peacockpiper.com)  
Samantha W. Mahoney – [smahoney@peacockpiper.com](mailto:smahoney@peacockpiper.com)



The Council for Watershed Health (“CWH”) is a 501(c)(3) non-profit organization. Our mission is to advance the health and sustainability of our region’s watersheds, rivers and habitats - both in natural areas and urban neighborhoods. We do this through science-based research, education and inclusive stakeholder engagement.

### **Elmer Paseo Refresh and Replant**

Almost a decade ago, CWH managed the implementation of the Elmer Avenue Neighborhood Retrofit (Elmer Avenue) demonstration project in the Sun Valley neighborhood of the City of Los Angeles. Elmer Avenue is a neighborhood scale retrofit project that incorporates stormwater management strategies. It was completed for the neighborhood street and residences in 2010 and the alley in 2012. The strategies completed on both private and public property mimic natural processes to manage stormwater runoff and result in multiple benefits. These benefits include the infiltration of runoff that augments local water supplies and improved water quality of runoff that flows to the Los Angeles River (LA River). Elmer Avenue is one of the region’s first multi-benefit “green street” projects. It manages runoff from 50 acres upstream and achieved the goals of reducing flooding, increasing stormwater runoff quality, educating residents and stakeholders on local watershed issues, and increased green space and habitat. Upstream runoff managed at the site includes runoff from industrial facilities and from roadways serving traffic from industrial facilities adjacent to the residential neighborhood that would otherwise reach the LA River without being treated or infiltrated.

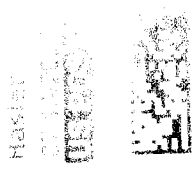
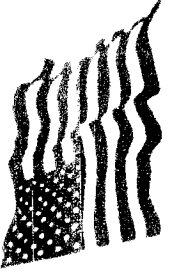
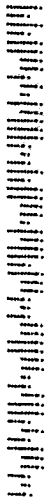
The Elmer Avenue Neighborhood Retrofit Project (Elmer Paseo) included the redesign of a neglected alley at the southern end of Elmer Avenue. The Elmer Paseo was redesigned to manage 10 acres of runoff from the surrounding neighborhood. Elmer Paseo manages dry and wet weather runoff with design strategies that mimic natural processes. Elmer Paseo features a vegetated bioswale and a permeable concrete pathway that captures and directs runoff to a subsurface infiltration trench. The original plant palette featured 100% plants native to the surrounding area. The redesigned alley captures, cleans, and infiltrates runoff year-round; reduces local flooding; improves walkability and safety; increases neighborhood green space; provides habitat for pollinators; and is used to educate Sun Valley Magnet students and other students on watershed stewardship.

Because this demonstration landscape is now 8 years old and requires maintenance, it shall be refreshed and replanted to ensure it continues to provide benefits to the Elmer Avenue residents and the LA River Watershed. Over the years, sediment has filled in the swale and runoff has carried weed seed that has germinated and grown to displace many of the native plants.

We propose to assemble the original design and construction team and project partners to facilitate a review and assessment of the successes and challenges of Elmer Paseo. The team will develop a set of improvement and enhancement recommendations, and will ultimately regrade and replant the vegetated bioswale to ensure it provides water quality benefits in the LA River Watershed for years to come. If feasible, we'll also provide 1-2 tours for Sun Valley Magnet School teachers and their students.

This SEP disbursement will be used to support the assessment of the Elmer Avenue Neighborhood Retrofit demonstration project, the project enhancement plan, and the enhancement implementation (e.g. swale sediment and weed removal). This SEP will be supplemented by approximately \$60,000 in other SEP funding and approximately \$10,000 in non-SEP funding.

BRODSKY & S  
Two Bala Plaza, Suite 510  
Bala Cynwyd, PA 19004



**X-RAYED**

**JUL 16 2020**

**DOJ MAILROOM**

U.S. DEPARTMENT OF JUSTICE  
ENVIRONMENT AND  
NATURAL RESOURCES DIV.

**JUL 17 2020**

EXECUTIVE OFFICE

CITIZEN SUITE COORDINATOR, DEPARTMENT OF JUSTICE, ENVIRONMENT  
PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF THE RETURN ADDRESS. FOLD AT DOTTED LINE  
-----  
**CERTIFIED MAIL®**

USPS CERTIFIED MAIL



9214 8901 9403 8316 1620 36

*Citizen Suit Coordinator  
Department of Justice  
Environment & Natural Resources Division  
Law & Policy Section  
P.O. Box 7415  
Ben Franklin Station  
Washington DC 20044-7415*